

Editor's note: appealed - dismissed, Civ.No. 82-174-BLG (D.Mont. Feb. 16, 1983)

REDWOOD EMPIRE LAND AND ROYALTY CO.

IBLA 82-624

Decided June 2, 1982

Appeal from the decision of the Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application, M-52676.

Affirmed.

1. Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases:
First-Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

APPEARANCES: James R. Learned, Esq., Cheyenne, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Redwood Empire Land and Royalty Company has appealed the decision of the Montana State Office, Bureau of Land Management (BLM), dated February 25, 1982, rejecting its simultaneous oil and gas lease application, M-52676, because its corporate qualifications file referenced on the application by serial number W-085278 was not up-to-date and under 43 CFR 3102.2-1(c) an applicant may not use its serial number reference if its qualifications file is not current.

Appellant received first priority for oil and gas lease M-52676 at the July 1981 simultaneous drawing. Its application was signed by Stanley Seidell, president, on July 10, 1981, and referenced its corporate qualifications file.

On November 23, 1981, the Montana State Office requested that the Wyoming State Office report whether appellant's serial number reference on its application was proper. The Wyoming State Office responded that its records as of July 1981 showed Stanley Seidell to be vice president but it attached an updated qualifications statement dated November 25, 1981, showing him to be president of the corporation.

The case file reflects that appellant's corporate qualifications were accepted by the Wyoming State Office on May 23, 1975. That filing indicated that the corporate officers authorized to act on behalf of the corporation were Max Herzog, president; Stanley Seidell, vice president; and George W. Lane, Jr., secretary. On November 9, 1981, the Wyoming State Office requested that appellant update its qualifications. The submission, accepted by BLM on November 27, 1981, indicates that the corporation's officers are as follows:

Stanley Seidell, President (until January 1, 1982)
Henry B. Murphy, President (after January 1, 1982)
Max L. Herzog, Vice-President
George W. Lane, Jr., Secretary
Jay W. Deaton, Treasurer

The officers designated as authorized to act on behalf of the corporation for oil and gas matters are Seidell and Murphy, during their respective terms, and Herzog and Lane.

In its statement of reasons, appellant notes regulations 43 CFR 3102.2-1(c) and 3102.2-5 and the regulation applicable before revisions were made effective June 16, 1980. Appellant contends that it was in full compliance with the regulations both before and after the amendment and that a change in the title of one of its officers authorized to act on behalf of the corporation is immaterial. Appellant urges that the language of 43 CFR 3102.2-5 requiring "a complete list of the corporate officers, identifying those authorized to act on behalf of the corporation in matters relating to Federal oil and gas leasing" does not clearly require that the specific corporate title of each authorized officer be stated.

[1] We might agree with appellant that the problem addressed herein is immaterial if it were merely a question of a particular corporate officer's different titles at specific times. The focus in this case, however, must be on the word "complete." Prior to the regulation changes in June 1980 a corporate applicant only had to identify those officers authorized to act for the corporation in oil and gas matters. The applicable regulation, 43 CFR

3102.2-5, requires "a complete list" of the corporation's officers with those authorized to act in these matters identified. As reflected by appellant's November 1981 update of its qualifications and its July application, it is apparent that the response to the requirement in 1981 was different from the response made in 1975 and on file with BLM.

A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Impel Energy Corp., 64 IBLA 92 (1982). In order to establish its qualifications to hold an oil and gas lease in July 1981, a corporation had to comply with 43 CFR 3102.2-5. As noted by BLM, 43 CFR 3112.6-1(b) required rejection of a simultaneous lease application where a corporate applicant has not complied with 43 CFR 3102.2-5. Regulation 43 CFR 3112.6-1(b) reads: "Unqualified applicants. The application of any applicant who is unqualified or has not filed or caused to be filed all evidence of qualification required by Subpart 3102 of the title shall be rejected." 1/

In lieu of separate filings each time it filed a new application, the corporate applicant could file an appropriate statement for reference in one of the BLM State Offices requesting that it be given an identification number, and refer to that number on subsequent applications so long as it remained current. 43 CFR 3102.2-1(c). Amendments to the file could be attached to an application if the file was not current and reference to the file made to establish qualifications for a particular application. In this case, however, appellant referenced a file which was not current without attaching the required additional information and, therefore, its application was defective. Hickory Creek Oil Co., 63 IBLA 313 (1982); Redwood Empire Land and Royalty Co., 62 IBLA 296 (1982); Cimarron Corp., 61 IBLA 90 (1981). In the simultaneous filing system, an applicant must establish its qualifications at the time of filing and cannot later cure any deficiencies. Adobe Oil & Gas Corp., 63 IBLA 106 (1982); but cf. Trans-Texas Energy, Inc., 57 IBLA 32 (1981) (over-the-counter noncompetitive lease offer may be cured but takes later priority). Strict compliance with the requirements of the regulations is required to ensure fairness and uniformity to all applicants for each simultaneous drawing.

1/ On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102 effectively eliminating the requirement to file the statement of corporate qualifications found in 43 CFR 3102.2-5. See 47 FR 8544 (Feb. 26, 1982). In the absence of countervailing public policy reasons or of intervening rights, this Board may apply an amended version of a regulation to a pending matter where it benefits the affected party to do so. See James E. Strong, 45 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 52, 55-56 (1957). In this case, however, it is not possible to do so because of the intervening rights of the second and third priority applicants.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

